
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Parker Construction, Inc.

Panama City, FL

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File Number: EB-06-TP-212

NAL/Acct. No.: 200732700008

FRN: 0015414048

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 24, 2007

By the District Director, Tampa Field Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Parker Construction, Inc., (“Parker”), apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating radio transmitting equipment on 145.020 MHz without a license. We conclude, pursuant to Section 503(b) of the Act² that Parker is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On August 10, 2006, in response to a complaint of unlicensed radio activity in Panama City, Florida, agents from the Commission’s Tampa Office of the Enforcement Bureau (“Tampa Office”) investigated the area and monitored several individuals discussing business activities on frequency 145.020 MHz. The agents used a mobile direction finding vehicle to locate the source of the radio transmissions to the Smurfit-Stone Mill in Panama City, Florida. The agents interviewed the owner and supervisor of construction for Parker, a subcontractor working at the Mill. They both admitted that they had been using the radio equipment to talk with their crew at the Mill and that they had been doing so for approximately three years. The agents inspected Parker’s radio transmitters and observed that they were Icom IC-V8 handheld radios set to channel 145.02. The power output was measured at 3.5 watts. These radios are designed to operate only on Amateur Radio Service (“ARS”) frequencies for amateur radio licensee use. Based on the agents’ experience with this type of equipment, the agent concluded that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s Rules (“Rules”),³ and, therefore, required a license. The owner/supervisor for Parker admitted that Parker did not have a license from the Commission to operate the radio transmitters.

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

³ Section 15.209 of the Rules provides that non-licensed broadcasting in the 88-216 MHz band is permitted only if the field strength of the transmission does not exceed 150 µV/m at three meters. 47 C.F.R. § 15.209.

III. DISCUSSION

3. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁵

4. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. The Table of Frequency Allocations incorporated in Section 2.106 of the Rules states that 144-146 MHz is allocated to the Amateur Band and is governed by Part 97 of the Rules.⁶ ARS station apparatus must be under the physical control of a person named on an amateur radio license grant “before the station may transmit on any amateur service frequency ...”⁷ On August 10, 2006, Parker admitted that it had been operating amateur radio transmitters on frequency 145.020 MHz without an Amateur license that day and for approximately the past three years. Based on the evidence before us, we find that Parker apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmitting equipment on 145.020 MHz without a Commission authorization.

5. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for unlicensed radio operation is \$10,000.⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁹ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Parker is apparently liable for a \$10,000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Parker Construction, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Act.¹⁰

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

⁶ 47 C.F.R. § 2.106.

⁷ 47 C.F.R. § 97.5(a).

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

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7. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Parker Construction, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

9. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Field Office, 2203, N. Lois Ave., Suite 1215, Tampa, FL 33607 and must include the NAL/Acct. No. referenced in the caption.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹¹

12. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Parker Construction, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director
Tampa Office
South Central Region
Enforcement Bureau

¹¹ See 47 C.F.R. § 1.1914